

This letter concerns the exemption for tangible personal property used or consumed in the operation of pollution control facilities located in enterprise zones. See 35 ILCS 120/1e. (This is a GIL.)

February 28, 2011

Dear Xxxxx:

This letter is in response to your letter dated November 17, 2010, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting a written letter ruling clarifying the exemption on pollution control equipment afforded certified Enterprise Zone businesses. We are not currently under audit nor have any pending litigation affecting the issue presented below.

Having met the requirements under the Retailers' Occupation Tax Act, 35 ILCS 120/1f, ABC has been certified by the Department of Commerce and Economic Opportunity (DCEO). This certification makes available a tax exemption on pollution control equipment under the Retailers' Occupation Tax Act, 35 ILCS 120/1e, which states in its entirety:

Subject to the provisions of Section 1f, or subject to the provisions of Section 5.5 of the Illinois Enterprise Zone Act, all tangible personal property to be used or consumed in the operation of pollution control facilities, as defined in Section 1a of this Act, within an enterprise zone established pursuant to the 'Illinois Enterprise Zone Act', as amended, shall be exempt from the tax imposed by this Act. (Source: P.A. 85-1182.) (underlining added for emphasis)

The tax exemption on pollution control equipment under Section 1a of this same Act was rescinded effective June 30, 2003. It states in its entirety:

'Pollution control facilities' means any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing or reducing air and water pollution as the term 'air pollution' or 'water pollution' is defined in the 'Environmental Protection Act', enacted by the 76th General Assembly, or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property.

Until July 1, 2003, the purchase, employment and transfer of such tangible personal property as pollution control facilities is not a purchase, use or sale of tangible personal property. (Source: P.A. 93-24, eff. 6-20-03.)

We understand this latter exemption to say only the treating equipment and repair parts qualify for the tax exemption. It does not extend to non-treating equipment, supplies used or consumed in the operation of a pollution control facility, and was available to all businesses not just those certified by DCEO.

Though the exemption under the Retailers' Occupation Tax Act, 35 ILCS 120/1a expired seven years ago, it is our position that Section 1e has always permitted an exemption on pollution control facilities within an enterprise zone for DCEO certified businesses. The exemption is available on the purchase of pollution treating equipment, non-treating (monitoring) equipment, all associated repair parts, and supplies used or consumed in the operation of a pollution control facility.

Our position is supported by the Department's own Regulation 130.1951i)3), which states in part:

However, if a business enterprise is certified by the Department of Commerce and Community Affairs, all tangible personal property used or consumed by it in the operation of pollution control facilities within an enterprise zone is exempt from tax. (underlining added for emphasis)

Kindly clarify the Department's position on the pollution control exemption available for DCEO certified businesses.

If you have any questions or require additional information, please feel free to write or call me.

DEPARTMENT'S RESPONSE:

The pollution control facilities sales tax exemption contained in Section 1a of the Retailers' Occupation Tax Act was, until July 1, 2003, available for "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term 'pollution' is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid, gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property". See, 35 ILCS 120/1a; 86 Ill. Adm. Code 130.335(a).

The exemption also extended to replacement parts for the pollution control equipment. The exemption did not extend, however, to chemicals used in such equipment, to fuel used in operating such equipment, or any other tangible personal property used in connection with the equipment, but which is not an integral part of the pollution control equipment. 86 Ill. Adm. Code 130.335(a). The primary purpose of the system, method, construction or device sold had to be for the elimination, removal or prevention of pollutants in the air or water in order to qualify for the sales tax exemption. The seller of pollution control equipment had to obtain a signed statement from the purchaser certifying the equipment would be used as a pollution control facility in order for the seller to be relieved of the duty to collect and remit tax on the sale.

Section 1e of the Retailers' Occupation Tax Act provides that "all tangible personal property to be used or consumed in the operation of pollution control facilities, as defined in Section 1a of this Act, within an enterprise zone established pursuant to the "Illinois Enterprise Zone Act", as amended, shall be exempt from the tax" 35 ILCS 120/1e. See also, 86 Ill. Adm. Code 130.1951(i). Section 130.1951(i)(3) provides numerous examples of items used or consumed in the operation of pollution control facilities.

There is no language in either the Act or the rules that indicates or suggests that that items qualifying as "pollution control facilities" under Section 1a also qualify for an exemption under Section 1e of the Act. Section 1e is limited to tangible personal property to be *used or consumed in the operation* of pollution control facilities. The express language of Section 1e cannot reasonably be interpreted to exempt the pollution control facilities themselves.

Section 1d provides an exemption for tangible personal property to be used or consumed within an enterprise zone or a High Impact Business in the process of the manufacturing or assembly of tangible personal property for wholesale or retail sale or lease or in the process of graphic arts production. Unlike Section 1e, Section 1d contains express language that states the exemption "includes repair and replacement parts for machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property or in the process of graphic arts production ... for wholesale or retail sale, or lease, and equipment, manufacturing or graphic arts fuels, material and supplies for the maintenance, repair or operation of such manufacturing or assembling or graphic arts machinery or equipment." 35 ILCS 120/1d. It should also be noted that the Retailers' Occupation Tax Act presently contains an exemption for tangible personal property that will be used primarily in the process of manufacturing or assembly and graphic arts machinery and equipment. 35 ILCS 120/2-5(14) and 2-45; 35 ILCS 2-5(4).

Sections 1d and 1e were added to the Retailers' Occupation Tax Act by P.A. 84-940, effective September 25, 1985. The General Assembly expressly included repair and replacement parts in the exemption contained in Section 1d. It did not include repair and replacement parts in the exemption contained in Section 1e. The Department cannot by rule expand the scope of Section 1e to include repair and replacement parts. Nor can the Department expand the scope of the exemption contained in Section 1e to include the pollution control facilities. The exemption contained in Section 1e is limited to tangible personal property to be used or consumed *in the operation* of pollution control facilities.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk